

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

KIM DOTCOM, et al.,

Defendants

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)
) The Honorable Liam O’Grady
)
)
) Criminal No. 1:12-CR-3
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)

**RENEWED MOTION OF QUINN EMANUEL URQUHART & SULLIVAN LLP
AND THE ROTHKEN LAW FIRM FOR LEAVE TO ENTER A LIMITED AND
SPECIAL APPEARANCE ON BEHALF OF MEGAUPLOAD LIMITED
AND TO EXCEED PAGE LIMITATIONS**

On May 30, 2012, non-parties Quinn Emanuel Urquhart & Sullivan LLP and the Rothken Law Firm (“Movants”) moved, on their own behalf, for leave to enter a limited and special appearance on behalf of defendant Megaupload Limited (“Megaupload”)¹ for purposes of filing a motion under *United States v. Farmer*, 274 F.3d 800 (4th Cir. 2001), and to withdraw their limited appearances at their option after the Court’s resolution of the *Farmer* motion, and for leave to exceed the page limit prescribed by Local Rule 47(F)(3) with respect to the *Farmer* motion. (See Dkt. 96). Copies of the *Farmer* motion and supporting memorandum that Movants proposed to file and argue pursuant to their limited and special appearances were filed on the docket at Dkt. No. 96-2.

Movants now respectfully renew their request to enter limited and special appearances on behalf of Megaupload for the purpose of seeking *Farmer* relief. Movants incorporate by

¹ Dkt. 96 was also submitted by Movants on behalf of defendant Kim Dotcom and by Craig C. Reilly on behalf of defendants Mathias Ortmann, Bram Van der Kolk and Finn Batato. The present renewed motion is brought on behalf of defendant Megaupload only.

reference their previous arguments on this issue, (*see* Dkt. 96), and raise two additional grounds for their renewed motion:

First, in denying Movants' original request without prejudice on June 28, 2012, the Court stated that "[a]s the Motion relates to the corporate Defendant Megaupload, the Court will consider further motions for *Farmer* relief, if necessary, after an Order is entered on the Motion to Dismiss." (Dkt. 111). The Court thereafter, on October 5, 2012, denied without prejudice Megaupload's motion to dismiss. (*See* Dkt. 127). Megaupload filed a renewed motion to dismiss the indictment without prejudice on November 19, 2012.² (*See* Dkts. 146 and 147). The Government opposed that motion on January 15, 2013, (*see* Dkt. 159), and Megaupload filed a rebuttal on January 29, 2013 (*see* Dkt. 163). It has thus been more than fourteen months since the Court denied without prejudice Megaupload's motion to dismiss and more than ten months since Megaupload's renewed motion to dismiss without prejudice was filed and fully briefed. Throughout this period, the Government has made no effort whatsoever to serve the company, and Megaupload remains in criminal limbo, with its assets frozen and without any ability to mount a defense in this case.

Second, Movants and Defendant Megaupload recently learned that the Court issued, at the Government's request, a sealed *ex parte* order which may substantially prejudice Megaupload's rights. When Megaupload and co-defendant Kim Dotcom submitted a letter objecting to the *ex parte* nature of the Government's submission, (*see* Dkt. 186), the Government responded that it is under no obligation to provide notice to Movants or Megaupload of any of the Government's filings, because Movants "have repeatedly refused to appear in the criminal matter, nor have they even recognized this Court's jurisdiction over them." (*See* Dkt. 187 at 2).

² Megaupload initially sought leave to renew its motion to dismiss without prejudice on October 10, 2013. (*See* Dkt. 128).

By the Government's account, "there is no counsel who represents the defendants in the criminal case before the Court." (*See id.*). The Government wholly ignores the Movants' and Megaupload's repeated efforts to gain access to the funds necessary to enable Movants to enter appearances in this case, including by seeking *Farmer* relief, (*see* Dkt. 96) and by offering to waive service and appear for trial provided only that the Government agree to release sufficient funds to permit Megaupload to defend itself (*see* Dkt. 137-3). The Government's suggestion that it is free to prejudice Defendants' rights with impunity unless and until counsel enter a formal appearance on Defendants' behalf, throws into stark relief the need for *Farmer* relief in this matter.

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For the foregoing reasons, Movants respectfully renew their request that the Court grant the undersigned leave to appear on a limited and special basis in order to argue on behalf of Defendants the merits of the proposed submission filed on the docket at Dkt. 96-2 without waiving any of Defendants' objections to this Court's jurisdiction. Movants further request that the Court grant them leave to exceed the page limit prescribed by Local Rule 47(F)(3). A proposed order is attached.

Dated: December 11, 2013

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Respectfully submitted,

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*(Counsel for Defendant Megaupload
Limited)*

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2013, the foregoing RENEWED MOTION OF QUINN EMANUEL URQUHART & SULLIVAN LLP AND THE ROTHKEN LAW FIRM FOR LEAVE TO ENTER A LIMITED AND SPECIAL APPEARANCE ON BEHALF OF MEGAUPLOAD LIMITED AND TO EXCEED PAGE LIMITATIONS was filed and served electronically by the Court's CM/ECF system upon all registered users.

/s/ Heather H. Martin

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It is further ORDERED that, after the Court's resolution of any motion filed pursuant to *United States v. Farmer*, counsel entering limited and special appearances pursuant to this Order may at their option withdraw their appearances without seeking further approval from this Court.

It is further ORDERED, for good cause shown, that the motion and supporting memorandum of law under *United States v. Farmer* that the above-referenced counsel have proposed for filing pursuant to their limited and special appearances, found on the docket at Dkt. 96-2, may exceed the thirty (30) page limit prescribed by Local Rule 47(F)(3).

Dated: December __, 2013

Judge Liam O'Grady
United States District Judge